

November 18, 2016

**VIA ECF & HAND DELIVERY**

The Honorable Sarah Netburn  
Thurgood Marshall U.S. Courthouse  
40 Foley Square, Room 430  
New York, NY 10007

Re: *Coordinated RMBS Trustee Litigation against HSBC Bank USA, N.A.*,  
Nos. 14-cv-8175; 14-cv-9366; 14-cv-10101; 15-cv-02144; 15-cv-10032; 15-cv-10096

Dear Judge Netburn:

We write on behalf of Plaintiffs in the above-captioned actions to request an informal discovery conference regarding the following three issues that are now ripe for judicial intervention.

**1. HSBC Refuses To Schedule Nine FRCP 30(b)(1) Witness Depositions**

Plaintiffs noticed the depositions of nine relevant HSBC-affiliated witnesses commencing *more than two months ago*.<sup>1</sup> The depositions were originally noticed to occur beginning in November (i.e., two in November, one in December, and six in January). HSBC, however, refused to produce these witnesses for deposition on the noticed dates or offer alternative dates. Instead, HSBC only recently noticed depositions of the BlackRock Plaintiffs and then attempted to condition its scheduling the HSBC witness depositions on simultaneously scheduling the BlackRock Plaintiff depositions. The Court has already addressed these tactics and ruled that imposing such arbitrary conditions on the scheduling of depositions is improper. *See BlackRock Allocation Target Shares, et al. v. Wells Fargo Bank, N.A.*, 14 Civ. 9371 (S.D.N.Y.), Oct. 28, 2016 Hr’g Tr., at 112:12-14, 114:16-20; *id.* at 112:17-22 (“THE COURT: I am reasonably certain in federal court that there is no sort of . . . priority. I am not quite sure why these people are not being deposed.”) (Netburn, J.). Moreover, the BlackRock Plaintiffs have offered available dates for certain witnesses, and have committed to coordinate depositions with HSBC and provide dates for the remaining BlackRock Plaintiffs promptly. Accordingly, HSBC should be ordered to provide available dates for the nine HSBC witnesses to be deposed in December.

**2. HSBC Should Provide Additional Details About The Documents It Has Withheld**

Plaintiffs request leave to serve “specific,” “targeted” questions on HSBC to gain a better understanding of the specific documents HSBC has withheld from production on relevancy grounds. *See BlackRock Allocation Target Shares, et al. v. Wells Fargo Bank, N.A.*, 14 Civ. 9371 (S.D.N.Y.), Nov. 17, 2016 Hr’g Tr., at 38:17-24. Recently, the Court granted this same relief to the defendant in *Wells Fargo*, finding that the BlackRock Plaintiffs’ October 27, 2016 letter – which was in substantially the same format and provided the same level of detail as HSBC’s prior

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<sup>1</sup> Christina Baldwin Carr, Kevin Fisher, Marcy Hertz, Sue Lomax, Gerard Mattia, Mark Wirth, Doris Wong, Audrey Zabriskie, and Elena Zheng.

The Honorable Sarah Netburn  
 November 18, 2016  
 Page 2

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correspondence – was deficient in that it was “not entirely clear” as to what categories of responsive documents the Blackrock Plaintiffs were withholding. *Id.* Like Wells Fargo, Plaintiffs continue to have serious concerns about the sufficiency of HSBC’s productions and remain confused regarding the specific categories of documents HSBC has withheld on relevancy grounds. Plaintiffs believe they could similarly benefit from receiving additional details about the nature and identity of these documents.

### **3. HSBC Should Provide Evidence Supporting The Sufficiency Of Its Search Of Non-CTLA Custodians**

HSBC is in violation of the Court’s Orders regarding its obligations to search the electronically-stored information (“ESI”) and non-ESI for six employees outside of its Corporate Trust and Loan Administration (“CTLA”) division. Specifically, HSBC has failed to provide any information regarding the sources for ESI and non-ESI information, other than email, being searched for the six non-CTLA custodians. Indeed, HSBC’s miniscule productions for these custodians to date confirm that HSBC is not complying with the Court’s Orders and its discovery obligations.

<b>HSBC Custodian</b>	<b>Role</b>	<b>Doc Count</b>
Marcy Hertz	Servicing Oversight	2,446
Mark Wirth	Head of Whole Loan Trading	278
Michael J. Maser	Head of RBWM Mortgage	234
Michael Emer	Originations Oversight	197
Joseph Meyer	Primary liaison for originations	111
David Goeden	Origination and servicing oversight	36

HSBC’s limited production is particularly concerning because each of these individuals was involved in highly relevant proceedings, such as the Interagency Review, National Mortgage Settlement and FHFA coordinated proceedings, which were covered by the parties’ search terms and likely to generate substantial amounts of responsive documents. HSBC’s meager production for these custodians suggests that HSBC has failed to properly apply the Court-ordered searches, or is conducting a relevancy review designed to exclude responsive documents, or both. Plaintiffs request that the Court require HSBC to provide a sworn statement evidencing its effort to comply with the Court’s discovery orders, including an explanation of what sources were searched, what search terms were utilized, how many documents were returned in response to those terms, and why HSBC has produced so few documents (e.g., less than 300 documents for the Head of Whole Loan Trading for the more than 5-year relevant period).

The Honorable Sarah Netburn  
November 18, 2016  
Page 3

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Respectfully submitted,

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cc: All counsel of record (via ECF)